

IN THE CIRCUIT COURT OF THE  
FIFTH JUDICIAL CIRCUIT, IN AND  
FOR LAKE COUNTY, FLORIDA

SABRINA MONTGOMERY,  
individually, and as the Personal  
Representative of THE ESTATE OF  
BRYAN DEMETRIUS  
MONTGOMERY,

Case No:

2014 CA 234

Plaintiff,

v.

THE NATIONAL DEAF ACADEMY,  
LLC d/b/a NATIONAL DEAF  
ACADEMY, A Florida Limited Liability  
Company,

Defendant(s).

\_\_\_\_\_ /

**COMPLAINT**

The Plaintiff, SABRINA MONTGOMERY, individually and as Personal Representative of THE ESTATE OF BRYAN DEMETRIUS MONTGOMERY (appointment and Letters of Administration pending and will be filed with the Court upon receipt), by and through the undersigned counsel, files this COMPLAINT and states as follows:

**JURISDICTION AND VENUE**

1. This is an action for damages, which exceed the sum of FIFTEEN THOUSAND DOLLARS (\$15,000.00), exclusive of costs and interest, and otherwise within the jurisdiction of this Court.

2. Venue is proper in this Court because the incidents giving rise to this action occurred in Lake County, Florida.

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### PARTIES

3. Plaintiff, SABRINA MONTGOMERY, who was at all times relevant hereto the natural parent of BRYAN DEMETRIUS MONTGOMERY, a now deceased **developmentally disabled child, and who was at all times relevant hereto a resident of Bronx**, State of New York. Plaintiff, SABRINA MONTGOMERY, is being duly appointed as Personal Representative of The Estate of BRYAN DEMETRIUS MONTGOMERY (Appointment and Letters of Limited Administration pending and to be filed with the Court upon receipt).

4. SABRINA MONTGOMERY is the statutory survivor of her deceased son, BRYAN DEMETRIUS MONTGOMERY, pursuant to the Florida Wrongful Death Act, Fla. Statutes §768, et seq. Plaintiff, SABRINA MONTGOMERY, brings this claim on behalf of herself as statutory survivor, and as Personal Representative of the Estate of BRYAN DEMETRIUS MONTGOMERY, and demands all damages allowable by law.

5. Defendant, THE NATIONAL DEAF ACADEMY, LLC, d/b/a NATIONAL DEAF ACADEMY (hereinafter "NDA") was, and is, a Florida Limited Liability Company, authorized and registered to do business in the State of Florida, and conducting business in Lake County, Florida. As the employer of personnel involved in the safety, supervision, care and treatment of BRYAN DEMETRIUS MONTGOMERY, the NDA is vicariously liable for the acts and omissions of its employees and agents under the doctrine of *Respondeat Superior*.

6. At all times material, Defendant owned, managed, administered, maintained and/or operated a residential treatment facility for developmentally disabled persons located at 19650 U.S. 441, in Mount Dora, Lake County, Florida.

7. Defendant NDA is licensed by the State of Florida Agency for Health Care Administration to operate a residential treatment facility and/or a residential treatment center for children and adolescents in Lake County, Florida, subject to the provisions of Chapters 393 and 394 of the Florida Statutes, and Chapter 65E of the Florida Administrative Code.

### **GENERAL ALLEGATIONS**

8. Chapter 65E of the Florida Administrative Code contains regulations of the Florida Department of Health and Rehabilitative Services, and imposes duties of care upon residential treatment facilities and residential treatment centers for children and adolescents, such as NDA, and their employees, agents and consultants. These regulations mandate the protection of a particular class of persons, *i.e.*, residential facility and center residents, like BRYAN DEMETRIUS MONTGOMERY, because of their inability to protect themselves.

9. Chapter 65E of the Florida Administrative Code is intended to protect residential treatment facility and/or residential treatment center residents from injuries caused by neglect, abuse, inadequate and inappropriate care, treatment and services.

10. This action is brought, in part, pursuant to Florida Statutes, §§ 393 and 394, Chapter 65E of the Florida Administrative Code, and under and pursuant to F.S. §§ 768.16 and 18.

11. At all times material, Defendant NDA acted by and through its officers, directors, agents, servants, representatives, administrators and employees, who at all times material, conducted themselves within the course and scope of their authority, and/or employment, and/or agency.

12. At all times material, BRYAN DEMETRIUS MONTGOMERY was a developmentally disabled 17-year-old child who had been admitted to and was residing at Defendant NDA's facility in Mount Dora, Florida, and was helpless to care for himself. Decedent BRYAN DEMETRIUS MONTGOMERY was under the permanent care of Defendant, NDA, and was a resident of Lake County, Florida.

13. On or about February 2, 2012, BRYAN DEMETRIUS MONTGOMERY was pronounced deceased, the listed causes of death being refractory cardiogenic shock, possible myocarditis, anemia, and diabetes mellitus, conditions of which were caused or exacerbated by the negligence and lack of supervision by personnel at NDA who were responsible for his care and well-being.

14. Among other acts and omissions contributing to or causing the death of BRYAN DEMETRIUS MONTGOMERY while under the care of the NDA, the NDA failed to timely conduct a nutritional screening or assessment of BRYAN by a nutritionist or registered dietician despite knowing BRYAN was diabetic; failed to ensure proper diabetes management or the development of measurable diabetic management goals despite knowing that BRYAN presented to the NDA in late December 2011 with insulin-dependent diabetes mellitus as an identified and primary health condition; failed to ensure proper diabetes management was included in BRYAN'S master treatment plan as a primary problem pursuant to Chapter 65E of the Florida Administrative Code; failed to document, monitor or supervise BRYAN'S diabetes and nutrition; and failed to adequately train, monitor and supervise its personnel in the appropriate care and treatment of diabetes and nutrition specific to BRYAN.

**COUNT ONE**  
**WRONGFUL DEATH – NEGLIGENCE**

The Plaintiff adopts by reference all of the allegations in Paragraphs 1 – 14 above, each inclusive, as though fully set forth herein.

15. At all times material, Defendant owed BRYAN DEMETRIUS MONTGOMERY a duty to exercise reasonable care for his health and safety under the circumstances of his physical and mental condition during his residency at NDA.

16. Defendant NDA owed BRYAN DEMETRIUS MONTGOMERY the duty to provide him with appropriate care, which included, but was not limited to, the duty to comply with applicable regulations, including Chapter 65E of the Florida Administrative Code, and Chapters 393 and 394, Florida Statutes.

17. Defendant NDA was negligent, and breached its duties of care owed to BRYAN DEMETRIUS MONTGOMERY in at least the following ways:

a. Failing to supervise and/or monitor BRYAN DEMETRIUS MONTGOMERY'S known health conditions, including diabetes;

b. Failing to establish, follow and implement a proper plan of care for BRYAN DEMETRIUS MONTGOMERY given his known health conditions, including diabetes;

c. Failing to adequately train, supervise and monitor employees and BRYAN DEMETRIUS MONTGOMERY'S caretakers on his need for supervision and monitoring his known health conditions, including diabetes;

d. Failing to ensure proper nutrition and food and hydration intake for BRYAN DEMETRIUS MONTGOMERY;



e. Failing to timely conduct a nutritional screening or assessment of BRYAN DEMETRIUS MONTGOMERY by a nutritionist or registered dietician despite knowing BRYAN DEMETRIUS MONTGOMERY was diabetic;

f. Failing to ensure proper diabetes management or the development of measurable diabetic management goals despite knowing that BRYAN DEMETRIUS MONTGOMERY presented to the NDA in late December 2011 with insulin-dependent diabetes mellitus as an identified and primary health condition;

g. Failing to ensure proper diabetes management was included in BRYAN'S master treatment plan as a primary problem pursuant to Chapter 65E of the Florida Administrative Code;

h. Failing to document, monitor or supervise BRYAN DEMETRIUS MONTGOMERY'S diabetes and nutrition;

i. Failing to adequately train, monitor and supervise its personnel in the appropriate care and treatment of diabetes and nutrition specific to BRYAN DEMETRIUS MONTGOMERY;

j. Failing to properly and adequately set forth a treatment plan clinically considering BRYAN DEMETRIUS MONTGOMERY'S physical, behavioral, and psychological needs, developmental level and chronological age, primary diagnosis, family situation, educational level, and expected length of stay;

k. Failing to use appropriate remedial techniques to the extent BRYAN DEMETRIUS MONTGOMERY'S was at all himself non-compliant with medical management of his health conditions or was not capable of self-nutrition or was not eating given his inability to do so while experiencing ongoing and deteriorating compromising health conditions;

l. Failing to ensure compliance with its own master treatment plan for BRYAN DEMETRIUS MONTGOMERY;

m. Failing to follow its own policies and procedures;

n. Failing to ensure proper medical care and medication for abscesses,

MRSA, and for known mental and psychiatric conditions;

o. Failing to properly care for the minor child;

p. Failing to properly recognize the NDA was unable to adequately care for the minor child;

q. Failing to implement necessary safety precautions for the minor child in order to prevent him injury, death or exacerbation of physical and mental health conditions; and

r. Other acts of negligence which may be revealed during discovery.

18. As a direct and proximate result of Defendant NDA's negligence and violation of BRYAN DEMETRIUS MONTGOMERY'S resident rights, BRYAN DEMETRIUS MONTGOMERY died on February 2, 2012.

19. As a further direct and proximate result of Defendant NDA's negligence, violations of BRYAN DEMETRIUS MONTGOMERY'S resident rights, and breaches of their duties of reasonable care, Plaintiff SABRINA MONTGOMERY, individually, and as personal representative of the Estate of BRYAN DEMETRIUS MONTGOMERY, is entitled to recover damages pursuant to Florida's Wrongful Death Act, §768.16 *et seq.*, and other applicable Florida law.

20. As a direct and proximate result of the Defendant's above described breaches of its duties of care, Plaintiff SABRINA MONTGOMERY, individually, and as personal representative of the Estate of BRYAN DEMETRIUS MONTGOMERY, is entitled

to recover damages that include, but are not limited to mental pain and suffering, loss of BRYAN DEMETRIUS MONTGOMERY'S companionship, medical expenses associated with BRYAN DEMETRIUS MONTGOMERY'S injuries, funeral expenses, and such other damages as are allowed under Florida law for the loss of her minor child.

**WHEREFORE,** Plaintiff SABRINA MONTGOMERY, individually, and as personal representative of the Estate of BRYAN DEMETRIUS MONTGOMERY, demands judgment against Defendant NDA in excess of fifteen thousand dollars (\$15,000.00), post judgment interest as allowable by law, any and all costs and attorney's fees as allowable by law, and demands trial by jury of all issues so triable. Plaintiff reserves the right to amend her complaint to add a claim for punitive damages at a later date.

**COUNT TWO**  
**CLAIM FOR ABUSE AND NEGLECT OF A CHILD PURSUANT TO FLORIDA**  
**STATUTES, CHAPTER 394, THE FLORIDA MENTAL**  
**HEALTH ACT**

The Plaintiff adopts by reference all of the allegations in Paragraphs 1 – 14 above, each inclusive, as though fully set forth herein.

21. Defendant NDA owed a statutorily mandated duty of care to BRYAN DEMETRIUS MONTGOMERY which required it to honor BRYAN DEMETRIUS MONTGOMERY'S rights as set forth in Florida Statutes Chapters 393 and 394. These rights included, but were not limited to:

- a. affording him the right to be free from abuse, including abuse, neglect, and exploitation;
- b. affording him the right to be fully informed of his medical condition and proposed treatment;



c. affording him the right to receive adequate and appropriate health care and protective and support services;

d. affording him the right to be treated courteously, fairly and with a measure of dignity;

e. affording him the right to be free from mental and physical abuse; a n d

e. compliance with all regulations for the operations of residential treatment centers promulgated by the Department of Health and Rehabilitative Services and contained in Florida Administrative Code 65E.

22. Defendant NDA breached the statutorily defined duties it owed BRYAN DEMETRIUS MONTGOMERY'S, and violated BRYAN DEMETRIUS MONTGOMERY'S statutorily guaranteed rights, in at least the following ways:

a. Failing to supervise and/or monitor BRYAN DEMETRIUS MONTGOMERY'S known health conditions, including diabetes;

b. Failing to establish, follow and implement a proper p l a n o f c a r e f o r BRYAN DEMETRIUS MONTGOMERY given his known health conditions, including diabetes;

c. Failing to adequately train, supervise and monitor employees and BRYAN DEMETRIUS MONTGOMERY'S caretakers on his need for supervision and monitoring his known health conditions, including diabetes;

d. Failing to ensure proper nutrition and food and hydration intake for BRYAN DEMETRIUS MONTGOMERY;

e. Failing to timely conduct a nutritional screening or assessment of BRYAN DEMETRIUS MONTGOMERY by a nutritionist or registered dietician despite knowing BRYAN DEMETRIUS MONTGOMERY was diabetic;

f. Failing to ensure proper diabetes management or the development of measurable diabetic management goals despite knowing that BRYAN DEMETRIUS MONTGOMERY presented to the NDA in late December 2011 with insulin-dependent diabetes mellitus as an identified and primary health condition;

g. Failing to ensure proper diabetes management was included in BRYAN'S master treatment plan as a primary problem pursuant to Chapter 65E of the Florida Administrative Code;

h. Failing to document, monitor or supervise BRYAN DEMETRIUS MONTGOMERY'S diabetes and nutrition;

i. Failing to adequately train, monitor and supervise its personnel in the appropriate care and treatment of diabetes and nutrition specific to BRYAN DEMETRIUS MONTGOMERY;

j. Failing to properly and adequately set forth a treatment plan clinically considering BRYAN DEMETRIUS MONTGOMERY'S physical, behavioral, and psychological needs, developmental level and chronological age, primary diagnosis, family situation, educational level, and expected length of stay;

k. Failing to use appropriate remedial techniques to the extent BRYAN DEMETRIUS MONTGOMERY'S was at all himself non-compliant with medical management of his health conditions or was not capable of self-nutrition or was not eating given his inability to do so while experiencing ongoing and deteriorating compromising health conditions;

l. Failing to ensure compliance with its own master treatment plan for BRYAN DEMETRIUS MONTGOMERY;

m. Failing to follow its own policies and procedures;

n. Failing to ensure proper medical care and medication for abscesses, MRSA, and for known mental and psychiatric conditions;

o. Failing to properly care for the minor child;

p. Failing to properly recognize the NDA was unable to adequately care for the minor child;

q. Failing to implement necessary safety precautions for the minor child in order to prevent him injury, death or exacerbation of physical and mental health conditions; and

r. Other acts of negligence which may be revealed during discovery.

23. As a direct and proximate result of Defendant NDA's negligence and violation of BRYAN DEMETRIUS MONTGOMERY'S statutory resident rights, BRYAN DEMETRIUS MONTGOMERY died on February 2, 2012.

24. As a further direct and proximate result of Defendant NDA's negligence, violations of BRYAN DEMETRIUS MONTGOMERY'S statutory resident rights, and breaches of their duties of reasonable care, Plaintiff SABRINA MONTGOMERY, individually, and as personal representative of the Estate of BRYAN DEMETRIUS MONTGOMERY, is entitled to recover damages pursuant to Florida's Wrongful Death Act, §768.16 *et seq.*, and other applicable Florida law.

25. As a direct and proximate result of the Defendant's above described breaches of its duties of care and violations of Florida Statutes, Plaintiff SABRINA MONTGOMERY, individually, and as personal representative of the Estate of BRYAN

DEMETRIUS MONTGOMERY, is entitled to recover damages that include, but are not limited to mental pain and suffering, loss of BRYAN DEMETRIUS MONTGOMERY'S companionship, medical expenses associated with BRYAN DEMETRIUS MONTGOMERY'S injuries, funeral expenses, and such other damages as are allowed under Florida law for the loss of her minor child.

**WHEREFORE**, Plaintiff SABRINA MONTGOMERY, individually, and as personal representative of the Estate of BRYAN DEMETRIUS MONTGOMERY, demands judgment against Defendant NDA in excess of fifteen thousand dollars (\$15,000.00), post judgment interest as allowable by law, any and all costs and attorney's fees as allowable by law, and demands trial by jury of all issues so triable. Plaintiff reserves the right to amend her complaint to add a claim for punitive damages at a later date.

Respectfully submitted this \_\_\_\_\_ day of January, 2014.

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